No. 90-1435

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1990

COOK COUNTY OFFICERS ELECTORAL BOARD, *et al.,*

Petitioners,

vs.

DOROTHY REED, *et al.,*

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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March, 1991

QUESTIONS PRESENTED

1. Does a requirement that a new party running only in a county obtain a total of 50,000 signatures when statewide candidates need only obtain 25,000 signatures unconstitutionally burden the right to ballot access in violation of the First and Fourteenth Amendments to the United States Constitution?

2. Does a requirement that new party candidates for countywide offices are barred unless the party candidates running in a district of that county also have sufficient petition signatures unconstitutionally burden the right to ballot access in violation of the First and Fourteenth Amendments to the United States Constitution?

3. Does a restriction on the expansion of city political parties to countywide parties by prohibiting use of the same party name unconstitutionally burden the right to ballot access in violation of the First and Fourteenth Amendments to the United States Constitution?

LIST OF PARTIES

The parties to the proceedings below include the petitioners, the Cook County Officers Electoral Board and

its members, David D. Orr[1], County Clerk of Cook County, Illinois; Aurelia Pucinski, Clerk of the Circuit Court of Cook County and Ernesto D. Borges, Jr.[2]

The respondents include the objectors to the Harold Washington Party candidates: Dorothy Reed, Valerie Sutton, Patton L. Feichter, Erwin Ricks and David Barrera.

Certain other respondents herein are the candidates of the Harold Washington Party. On October 19, 1990, these respondents filed their own Petition for Certiorari (No. 90-1126): Barbara J. Norman, Janice H. Robinson, Donald Pamon, Heldia Richardson, Tommy Brewer, Charles W. Alexander, Dorothy C. Hogan, Will Lawrence, Kenneth G. Hopkins, R. Eugene Pincham, Robert E. Pincham, Jr., Robert E. Brooks, Percy V. Coleman, Vivian D. Stewart-Tyler, James A. Deans, Dino F. McNeal, Mary King Criss, David T. Persons, Mello Sam H. Clora, Judy Marie Hawthorne, Chester LeSure, Celia Duncan, Don C. Passmore, Jr. and Bobbie J. Smith.

The remaining respondents are the Chicago Board of Election Commissioners and its members, Michael Hamblet, Arnette Hubbard and Raymond Jagielski.

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[1]Mr. Orr succeeded Stanley T. Kusper, Jr. as County Clerk on December 3, 1990. He is named herein pursuant to Rule 35.3.

[2]The statutorily designated third member of the Electoral Board, State's Attorney Cecil Partee, and his substitutes, Treasurer Edward Rosewell and Sheriff James O'Grady, were all ineligible to serve since they were running against HWP candidates. Attorney Ernesto D. Borges, Jr., was appointed as a public member of the Electoral Board by the Chief Judge of the Circuit Court of Cook County pursuant to §10-9 of the Illinois Election Code.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

The petitioners, the Cook County Officers Electoral Board and its members, David D. Orr, Aurelia Pucinski and Ernesto D. Borges, Jr., respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of Illinois entered in the above-entitled proceeding on October 12, 1990.[3]

[3]The decision of the Electoral Board was adopted by a 2-1 vote.

OPINIONS BELOW

The order of the Supreme Court of Illinois has not yet been reported and is reprinted in the appendix, p. 2a, *infra*. The supreme court has not yet issued the opinion "to be issued at a later date" referred to in the order. The memorandum opinion of the Circuit Court of Cook County, Illinois (Wachowski, J.) has not been reported. It is reprinted in the appendix, p. 16a, *infra*. The decision of the Cook County Officers Electoral Board has not been reported. It is reprinted in the appendix, p. 29a, *infra*.

JURISDICTION

The order of the Supreme Court of Illinois was issued on October 12, 1990. On October 18, 1990, the supreme court denied a motion to recall its mandate. No petition for rehearing was filed. On January 15, 1991, Justice Stevens ordered that the time for filing this petition for writ of certiorari be extended to and including March 11, 1991.

The petitioners invoke jurisdiction pursuant to 28 U.S.C. § 1257 (a). The Illinois Supreme Court's order construed the provisions of Ill.Ann.Stat. ch. 46, ¶¶ 10-2 and 10-5.2 (Smith-Hurd 1990 Supp.) in a manner contrary to the First and Fourteenth Amendments to the United States Constitution as interpreted by this court.

CONSTITUTIONAL PROVISIONS INVOLVED

First Amendment to the United States Constitution:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for redress of grievance.

Fourteenth Amendment to the United States Constitution:

No state shall * * * deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTES INVOLVED

Ill.Ann.Stat. ch. 46, ¶ 10-1 (Smith-Hurd 1990 Supp.) (Illinois Election Code)

(Article 10. Making of Nominations in Certain Other Cases) §10-1. Political parties as hereinafter defined and individual voters to the number and in the manner hereafter specified may nominate candidates for public offices whose names shall be placed upon the ballot to be furnished, as hereinafter provided: However, no nomination may be made under the provisions of this Article 10 by any established political party which at the general election next preceding, polled more than 5% of the entire voter case in the State, district or unit of local government for which nomination is made. * * *

Ill.Ann.Stat. ch. 46, ¶ 10-2 (Smith-Hurd 1990 Supp.) (Illinois Election Code)

* * * [a]ny such group of persons hereafter desiring to form a new political party within any county shall file such petition with the county clerk * * *. Any such petition for the formation of a new political party * * * shall at the time of filing contain a complete list of candidates of such party for all offices to be filled in the * * * political subdivision * * * at the next ensuing election then to be held * * *.

* * *

In the case of a petition to form a new political party within a political subdivision in which officers are to be elected from districts and at-large, such petition shall consist of separate components for each district from which an officer is to be elected. Each component shall be circulated only within a district of the political subdivision and signed only by qualified electors who are residents of such district. Each sheet of the petition must contain a complete list of the names of the candidates of the party for all offices to be filled in the political subdivision at large, but the sheets comprising each component shall also contain the names of the those candidates to be elected from the particular district. Each component of the petition for each district from which an officer is to be elected must be signed by qualified voters of the district equalling in number not less than 5% of the number of voters who voted at the next preceding regular election in such district at which an officer was elected to serve the district. The entire petition, including all components, must be signed by a total of qualified voters of the entire political subdivision equalling in number not less than 5% of the number of voters who voted at the next preceding regular election in such political subdivision at which an officer was elected to serve the political subdivision at large. * * *

The filing of such petition shall constitute the political group a new political party, for the purpose only of placing upon the ballot at such next ensuing election such list or an adjusted list in accordance with section 10-

11. of party candidates for offices to be voted for * * * in such district or political subdivision less than the State * * *.

* * * If, at such ensuing election, * * * any other candidates of the new political party shall receive more than 5% of the votes case for the office or offices for which they were candidates at such election * * * in any district or political subdivision, as the case may be, then and in that event, such new political party shall become an "established political party" within * * * such district or political subdivision less than the State, as the case may be, in which such candidate or candidates received more than 5% of the votes cast for the office or offices for which they were candidates. It shall thereafter nominate its candidates for public offices to be filled in * * * such district or political subdivision, as the case may be, under the provisions of the laws regulating the nomination of candidates of established political parties at primary elections and political party conventions, as now or hereafter in force.

Ill.Ann.Stat. ch. 46, ¶ 10-5 (Smith-Hurd 1990 Supp.) (Illinois Election Code)

All petitions for nomination, shall, besides containing the names of candidates, specify as to each:

* * *

(2) The new political party, if any, represented, expressed in not more than 5 words. However, such party

shall not bear the same name as, nor include the name of any established political party as defined in this Article. This prohibition does not preclude any established political party from making nominations in those cases in which is authorized to do so.

STATEMENT OF THE CASE

This case concerns the right of the candidates of the Harold Washington Party ("HWP") to be placed on the November, 1990 ballot for election to various offices within Cook County, Illinois.

The petitioner, the Cook County Officers Electoral Board ("Board"), is an administrative agency created by Illinois law to hear and pass upon objections to nomination papers filed by candidates for public office. If its decision is appealed on administrative review to the courts, the Board joins the prevailing party in support of the decision.

On August 6, 1990, the respondents Barbara J. Norman, *et al.*, ("HWP candidates") filed nomination papers requesting that their names appear on the ballot for various offices. The HWP fielded candidates for all non-judicial county-wide offices, county commissioners to be elected at-large within the City of Chicago ("city commissioners"), county commissioners to be elected at-large from outside the City of Chicago ("suburban

commissioners")[4] and for commissioners of the Metropolitan Water Reclamation District of Greater Chicago.[5]

The Electoral Board Proceedings

The respondents Dorothy Reed, *et al.*, ("objectors") filed objections to the HWP candidates, alleging that the nomination papers did not comply with various provisions of Article 10 of the Illinois Election Code. Two of these objections remain relevant to this case: [1] the name "Harold Washington Party" could not be used by the county candidates, since it was already the name of an "established political party" as defined in §10-5(2) of the Election Code[6] and [2] since 25,000 signatures were not submitted for suburban commissioner candidates, the HWP failed to file a "complete slate" for all possible "components" of Cook County, as required by §10-2.

After considering various motions and concluding an extensive trial, the Board ruled that all the HWP candidates would remain on the ballot, with the exception of the Water District and suburban commissioner candidates. The Board specifically recognized that federal

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[4]Members of the Cook County Board are elected from these two districts pursuant to Ill.Const. transition schedule, § 5(b).

[5]This is a special-purpose district which, while wholly contained within Cook County, overlaps the Chicago-suburban boundary.

[6]All statutory citations herein are to the Illinois Election Code, Ill.Ann.Stat. ch. 46, ¶ ____ (Smith-Hurd Supp. 1990).

constitutional guarantees prevented it from taking an overly strict construction of the statutes and removing the candidates from the ballot as urged by objectors. See pp. 40a, 48a, *infra*.

The Circuit Court Proceedings

On administrative review, the Chicago Board of Election Commissioners and the Cook County Clerk[7] were joined as parties in order to easily subject them to the jurisdiction of the court for the purpose of enforcing orders relating to ballot printing.

The Board defended its decision, and suggested that the interpretation given to the statutes by the objectors was not consonant with the applicable constitutional principles as interpreted by this Court. The Circuit Court of Cook County affirmed the Board's decision in part and reversed it in part. The Circuit Court's decision to remove all HWP candidates rested both on their failure to include judicial candidates on the slate, which the court found to be "county offices" necessary to complete the "slate" as required by §10-2, and the party's failure to submit a sufficient quantity of suburban signatures for the suburban component of the slate. See p. 26a, *infra*.

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[7]The Clerk was named at this juncture in his ministerial capacity as issuer of the ballots, rather than merely as a member of the Electoral Board.

The Illinois Supreme Court Proceedings

Because of the great public interest in the case and the need to resolve the issues before the impending November election, the Illinois Supreme Court heard the matter on an expedited direct appeal pursuant to Ill.Sup.Ct.R. 302(b).[8]

The supreme court issued a brief order affirming the removal of the HWP candidates on the grounds that the party could not use the HWP name countywide, and that the failure of the suburban commissioner candidates to obtain sufficient signatures doomed their running-mates. The majority's order was joined by four justices. Three justices joined in two separate dissents. The supreme court indicated that a full opinion would follow, but none has yet been issued. See p. 2a, *infra.*

The Proceedings in this Court on the Application for Stay and Subsequent Developments

Denied relief by the state court of last resort, the HWP candidates filed a Petition for Stay with Justice Stevens in his capacity as Circuit Justice on October 19, 1990. On October 22, 1990, Justice Stevens issued an order stating that the petition "raised a federal

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[8]The HWP first appealed to the Appellate Court for the First Judicial District of Illinois. That court apparently recognized the erroneous analysis of the Circuit Court's decision, because it ordered that the HWP candidates be restored to the ballot pending disposition of the appeal. *Reed v. Kusper,* Ill.App.Ct. No. 1-90-2708 (order of September 26, 1990).

constitutional question of sufficient substance to merit the attention of the full Court". In order that the status quo be maintained during the full Court's review of the case, Justice Stevens granted the petition and recalled the mandate of the Illinois Supreme Court pending further order of the Court.

Since the practical effect of this order was to restore the HWP candidates to the ballot, the Electoral Board and election authorities presented additional written arguments to this Court addressing the logistical difficulties in reprinting ballots only days before the election.

On October 25, 1990, the full court granted the Petition for Stay to the extent that the Board's decision was to remain in effect pending the timely filing and disposition of a petition for a writ of certiorari. *Norman v. Reed*, ___ U.S. ___, 111 S.Ct. 333, 112 L.Ed.2d 298 (1990).

The election was conducted on November 6, 1990, using ballots modified on an emergency basis to accommodate the HWP candidates. No HWP candidate was elected. However, HWP candidates did receive over 5% of the vote in several races. Section 10-2 of the Illinois Election Code grants such successful parties equal status with the democratic and republican parties as "established political parties" in that jurisdiction, entitling them to nominate by primary and take advantage of lower petition signature requirements.[9]

The HWP candidates have filed a petition for certiorari seeking review of the Illinois Supreme Court's

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[9]See Reasons for Granting the Writ, Part III, *infra*.

decision. The Board and its members now do likewise.

How the Federal Question Was Raised

Before the Electoral Board, the HWP candidates moved to dismiss the objection regarding the deficiency in the suburban commissioner petitions, arguing that the objections was based on an "unconstitutional premise". The HWP's motion cited *Illinois State Board of Elections v. Socialist Workers Party,* 440 U.S. 173 (1979), *Williams v. Rhodes,* 393 U.S. 23 (1968) and *Moore v. Ogilvie,* 394 U.S. 814, *inter alia,* and urged that the "well-established" principles of those cases, "it is simply impermissible to impose geographic/minimum signature requirements on new political parties attempting ballot status where the new political party, running countywide, has collected over twice as many signatures necessary to run for statewide office." Motion to Strike and Dismiss Objection No. 2 at 2-4, *Reed v. Norman,* Cook County Officers Electoral Board, Case No. 90-COEB-2.

The Board's decision on this issue rested on the fact that the objectors' position could not be reconciled with the candidates' and their supporters' rights as guaranteed by the United States Constitution. The Board stated:

> The statute is silent on the implementation of the objectors' suggested draconian penalty against a party which fell short in its attempt to filed suburban-only candidates and Metropolitan Water Reclamation District candidates, but which demonstrated enough support to qualify on

> the county and city ballots nonetheless. Such an action would disqualify HWP from the city and county ballots for which it otherwise fulfilled all statutory requirements. The objectors have not directed the Board's attention to any state interest that would be furthered by such a penalty, thus adding credence to the Board's concern that disqualification of HWP merely for failure to meet the suburban and/or Metropolitan Water Reclamation District requirement would be constitutionally infirm. *See* pp. 47-48a, *infra.*

Likewise, the Board found that these constitutional principles directed a similar finding with respect to the "same name" objection. The Board stated:

> A strict reading of the statute would have the constitutionally suspect effect of stifling the creation of a new major political party which starts in a small jurisdiction and then attempts to grow across the state. Such a narrow reading would unduly burden the candidates' rights to freedom of association.

See p. 40a, *infra.*

In the Circuit Court, both the candidates and the Board contended that the statutory interpretation suggested by the objectors would infringe on the candidates' and their supporters' constitutional rights. The candidates' petition for judicial review stated "it is unconstitutional to require the Harold Washington Party to gather more signatures to field county candidates than

it would need to field a slate of candidates for statewide office [and] it is impermissible to impose geographic/minimum signature requirements." Petition for Judicial Review at 2-3, *Norman v. Kusper,* No. 90 CO 244 (Cir. Ct. Cook County, IL Sept. 20, 1990)

While the Circuit Court rested its decision on an interpretation of state law and expressly rejected the HWP candidates' constitutional arguments, those arguments went to the merit of the Circuit Court's eventual decision. The Circuit Court stated: "[The HWP candidates] suggest that §10-2's component aspect is unconstitutional. * * * This case is disposed of on other grounds. The constitutionality of §10-2 of the Election Code need not be addressed." See p. 24a, *infra.*

In the supreme court, the HWP candidates raised and the Electoral Board argued the same constitutional points.

The supreme court majority's order does not set forth the rationale or legal basis for the decision. However, the dissenting opinions manifest that federal constitutional issues were at the heart of the case, and that the removal of the HWP candidates infringed on constitutionally protected rights. In his dissent, Justice [now Chief Justice] Miller explained:

> The majority's result in the present case seemingly conflicts with the Supreme Court's decision in *Illinois State Board of Elections v. Socialist Workers Party* (1979) 440 U.S. 173, 59 L.Ed.2d 230, 99 S.Ct. 983, which invalidated, on constitutional grounds, an earlier provision in section 10-2 that effectively required a new party to present

more signatures to run a candidate in the City of Chicago than statewide. The Majority's construction of the statute produces a similar disparity.

See p. 14a, *infra.*

Similarly, Justice Ryan's dissent explicitly recognized that the majority's "narrow and strict construction" impinged on the fundamental rights of the candidates, and that the applicable statutes must be construed liberally. Justice Ryan used the *Socialist Workers* rationale to support his position that the majority's decision impermissibly restricted constitutionally protected interests. See pp. 8-9a, *infra.*

REASONS FOR GRANTING THE WRIT

I

THE DECISION BELOW CONFLICTS WITH THE DECISIONS OF THIS COURT BY PROHIBITING NEW POLITICAL PARTIES FROM EXPANDING FROM A CITY TO A COUNTY UNDER THE SAME NAME

The county HWP candidates sought to organize under the banner of a political party which had already

achieved substantial support in the City of Chicago[10] but which had not yet had the opportunity to run in Cook County.[11] The supreme court majority removed the county HWP candidates because the use of the same name violated the statutory proscription against duplicating the names of "established" political parties.

Section 10-1, however, provides that such a local party is only "established" as to the community in which its candidates ran. Accordingly, the "same name" ban extends, by its terms, only to parties that are "established" in the same jurisdiction. Since the HWP was not established in Cook County, the use of the HWP by the countywide candidates was entirely proper.

The Illinois Supreme Court's interpretation of this "same name" rule not only restricts the candidates' constitutional rights, but also is unworkable. Under this construction, if a local party achieves support and becomes "established" in the City of Cairo, Illinois, the same party name may not be used by candidates seeking municipal

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[10]The HWP first ran candidates in the April, 1989 mayoral election. The results of the election were:

Richard M. Daley (D)	577,141	55.4%
Timothy C. Evans (HWP)	428,105	41.1%
Edward R. Vrdolyak (R)	33,998	3.5%

This level of support was, of course, sufficient to grant HWP equal status with the democratic and republican parties as to Chicago municipal elections. Mr. Evans testified before the Electoral Board that he authorized the county candidates to continue use of the party name.

[11]The first countywide election after Evans' mayoral bid was the November, 1990 election.

office in Chicago, 400 miles away.[12] Similarly, candidates would be faced with the daunting task of investigating the status of their party name in each of Illinois' 6,620 units of local government. Such a requirement obstructs the ability of the new parties to form, let alone grow. Under the supreme court's rationale, anyone could successfully challenge the new party simply by finding an established party somewhere in the state which bears or includes the name as the challenged new party.

The Electoral Board interpreted this provision as merely prohibiting the use of party names which were "established" as to the subdivision in which the prospective candidates were running. Since the HWP was only established within the City of Chicago, the Board saw no bar to the use of the party name countywide. Likewise, the dissenting justices correctly noted that the majority's interpretation of §10-5 led inexorably to a result directly at odds with the settled decisions of this Court. See pp. 8a, 14a, *infra.*

Article 10's labyrinthine array of obstacles to new party ballot access has been slowly eroded by a series of cases considered by this Court. Together, these cases have outlined the basic principles of liberal ballot access found at the heart of the claims considered in this case. *See Illinois State Board of Elections v. Socialist Workers Party,* 440 U.S. 173, 99 S.Ct. 983 (1979) (invalidating a requirement that city candidates obtain more signatures

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[12]In Illinois, candidates for municipal offices generally shun the labels of the nationally-established political parties by forming "local" parties such as the "Good Government Party". *See Arden v. Village of Oak Lawn,* 537 F. Supp. 181, 184, n. 8 (7th Cir. 1982). Candidates for legislative and county offices generally run as democrats or republicans.

than statewide candidates); *Communist Party v. State Board of Elections,* 518 F.2d 517 (7th Cir. 1975), *cert denied,* 423 U.S. 986, 96 S.Ct. 394, 46 L.Ed.2d 303 (1975) (invalidating a requirement that statewide candidates must obtain no more than 13,000 of their 25,000 signatures from a single county); *Kusper v. Pontikes,* 414 U.S. 51, 94 S.Ct. 303, 38 L.Ed.2d 260 (1973) (invalidating a primary lock-out rule); *Moore v. Ogilvie,* 394 U.S. 814, 89 S.Ct. 1493, 23 L.Ed.2d 1 (1969) (invalidating a requirement that 25,000 signatures for statewide candidates must include at least 200 from each of 50 counties).

In *Socialist Workers,* this Court struck down just one of Illinois' many restrictions on new party formation and established that "[b]y limiting the choices available to voters, the State impairs the voters' ability to express their political preferences * * * [V]oting is of the most fundamental significance under our constitutional structure." 99 S.Ct. at 990.

Restrictions on new party formation must be necessary to serve compelling state interests and be adopted through use of the least restrictive means to those ends. This Court has recognized that new parties have played an important role in the political development of the nation, and that overbroad restrictions on those parties jeopardize this highly protected form of political expression. *Id.*

The freedom to associate as a political party is fundamental. *Williams v. Rhodes,* 292 U.S. 23, 30-31, 89 S.Ct. 5, 10, 21 L.Ed.2d 24 (1968). When new party candidates are removed from the ballot because of special restrictions on those parties, the candidates' fundamental right to associate is called into question. These

restrictions not only burden the rights of the candidates, but also those of their voter-supporters.[13] *Illinois State Board of Elections v. Socialist Workers Party,* 99 S.Ct. at 990 (1979).

Here, the petitioners urge the Court to rectify yet another injustice to third-party candidates. By refusing to permit authorized candidates to expand the mantle of their party into new jurisdictions, the Illinois court has thwarted any reasonable means through which Illinois new parties can achieve electoral access. (See Justice Miller's dissenting opinion at p. 13a, *infra.)*

The Board's decision honored the fundamental canon of statutory construction that ballot access statutes must be construed in a broad fashion to encourage candidacy rather than frustrate it. *Morrison v. Olson,* 487 U.S. 654, 682, 101 L.Ed.2d 569, 600, 108 S.Ct. 2597 (1988). The dissenting supreme court justices endorsed this judgment and preserved the candidates' rights, while also protecting the rights of the state to control ballot confusion.

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[13]All tolled, the HWP submitted about 44,000 signatures for its county, city and suburban candidates. See p. 49a, *infra.*

II

THE DECISION BELOW CONFLICTS WITH THE DECISIONS OF THIS COURT BY DENYING BALLOT ACCESS TO OTHERWISE-QUALIFIED CANDIDATES MERELY BECAUSE THEIR RUNNING-MATES FAILED TO OBTAIN SUFFICIENT SIGNATURES FROM A PARTICULAR DISTRICT

Illinois law does not generally permit candidates to run alone under a new party label. Section 10-2 requires that if more than one office is up for election in a jurisdiction, the party must file a "complete slate" of nominees for all offices serving that jurisdiction.[14] Additionally, if the jurisdiction is one in which officers are to be elected at large and from wholly-contained districts, the party must also file a slate petition with self-contained "components" nominating candidates for all district offices. §10-2.

Mindful of these restrictions, the HWP fielded candidates for countywide offices, Cook County Commissioners elected from Chicago, Cook County Commissioners elected from the suburbs, and Commissioners of the Metropolitan Water Reclamation

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[14]Interestingly, established parties need not fill every available ballot position. For instance, in heavily democratic areas such as Chicago, the republican party's line on the ballot often simply states "No Candidate Filed". For an analysis of the new party "slate" requirement, see *Stevenson v. State Board of Elections,* 794 F.2d 1776 (7th Cir. 1986) (Easterbrook, J., concurring).

District[15]. It is undisputed that the petitions for suburban commissioners contained less than the requisite 25,000 signatures.

The Board did not consider whether the 25,000 requirement for suburban commissioners, coupled with the 25,000 requirement for city commissioners, resulted in a practical requirement of 50,000 signatures which would be at odds with the *Socialist Workers* holding. The anomaly is the result of the statute's hybrid system of setting a flat signature requirement for some offices and using a percentage-based formula for others. If the percentage-based formula were used for the component new party filing, the signatures of the components would add up to that needed for the area-wide candidates. See *Socialist Workers* at 99 S.Ct. 983 (Rehnquist, J., concurring) ("The courts having knocked out key panels in an otherwise symmetrical mosaic, it is not surprising that little sense can be made of what is left.")

In the November, 1986 election for suburban commissioner, 635,285 ballots were cast. Thus, the 25,000 signature requirement for suburban commissioner is only 3.9% of the votes cast, a threshold permissible under this Court's standards as set forth in *Jenness v. Fortson,* 403 U.S. 431, 91 S.Ct. 1970, 29 L.Ed. 2d 554 (1971) (upholding signature requirement equalling 5% of registered voters).

Just as the Election Code does not mandate such

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[15]Although this component did not contain sufficient signatures to stand alone, the Board and Circuit Court found that the water district was not a "district" of Cook County as contemplated by § 10-2, and that this deficiency was not relevant to consideration of the remaining candidacies.

an absolute sanction for the duplication of a party name, neither does the statute demand such a penalty for failure to show support in another jurisdiction. Nonetheless, the Illinois Supreme Court majority narrowly interpreted the Election Code to strike the HWP county and city candidates merely because their running-mates did not demonstrate the required suburban support.

This construction ignores this Court's mandate in *Moore v. Ogilvie* and *Illinois State Board of Elections v. Socialist Workers Party,* and imposes the will of the voters of one small jurisdiction over the will of those in the large urban area. In effect, the decision below gives suburban voters a veto power over candidates running only in Chicago or countywide. Such geographic discrimination runs afoul of the principles established in *Moore v. Ogilvie,* 394 U.S. 814 (1969). In *Moore,* this Court held that Illinois' requirement that new parties present a total of 25,000 signatures distributed in groups of at least 200 from each of 50 counties, violated due process and equal protection. While signature requirements serve the important purpose of ensuring that the candidates seeking ballot status have "achieved a modicum of support" in the community, see *American Party of Texas v. White,* 415 U.S. 767, 94 S.Ct. 1296, 39 L.Ed.2d 744 (1974), the numerical framework for this test must always comport with constitutional standards.

Presumably, the slate requirement encourages party identification and cohesiveness. While this is a permissible goal, it hardly can be justified in the framework of a new party which has yet to form. Even if the "complete slate" requirement is justifiable in some context, there is clearly no rationale supporting the result

reached by the court below. The means chosen by the supreme court majority are not the "least drastic means" of advancing whatever state interest might be furthered by the slate requirement. Rather, they are quite severe, as they remove the candidates from the ballot and limit voter choice. *Richards v. Lavelle,* 620 F.2d 144 (7th Cir. 1980).

The dissenting justices correctly noted that the majority's decision "is not compelled by a fair reading of the relevant statutes and unnecessarily hampers voters of this State in the exercise of their rights." See p. 15a, *infra.*

III

THE QUESTIONS ARE NOT MOOT BECAUSE THE DECISION BELOW AFFECTS THE CONTINUED STATUS OF THE HAROLD WASHINGTON PARTY IN COOK COUNTY AND BECAUSE THE QUESTION IS CAPABLE OF REPETITION BUT MAY EVADE REVIEW

Even though the election has passed, the case is not moot. The HWP appeared on the ballot pursuant to this Court's stay order, and certain candidates received more than 5% of the vote.[16] The success of the HWP candidates entitles the party to "established" status in Cook County and the right to nominate its candidates by

---

[16]Dorothy Hogan, the HWP candidate for Superintendent of the Educational Service Region of Cook County, led the party ticket with 15.4% of the countywide vote.

primary elections.[17]

The HWP continues to support and field candidates for various offices. Unless the candidates and the Board obtain a judicial determination of their respective rights, this controversy is likely to repeat every two years.[18] Despite the expedited schedule in state court, this Court did not have the opportunity to consider the matter on the merits prior to the election. Because of the continuing impact of the decision below, the case is not moot and this Court should grant certiorari. *Roe v. Wade,* 410 U.S. 113, 93 S.Ct. 705 (1973).

CONCLUSION

For these reasons, the petitioners pray that this Honorable Court grant a writ of certiorari to review the decision below.

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[17]Established party status permits HWP candidates to appear on the ballot with significantly fewer signatures than are required of new parties. For example, democratic candidates for county office needed only 6,520 signatures for the 1990 ballot, instead of the 25,000 required of new party candidates.

[18]In fact, it is likely to intensify. At the November, 1990 election, voters approved a binding referendum to elect Cook County commissioners from 17 single-member districts. See Ill.Const. transition schedule, §5(b). Under the supreme court's holding, new party candidates for countywide offices in 1994 will have to submit 17-component petitions naming commissioner candidates in each commissioner district.

Respectfully submitted,

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708/424-5678,
Of Counsel.

IN THE SUPREME COURT OF ILLINOIS

DOROTHY REED et al.,	)	
	)	
Petitioners-Appellees,	)	
	)	
vs.	)	No. 70833
	)	
BARBARA J. NORMAN et al.,	)	
	)	
Respondents-Appellants.	)	

ORDER

Upon Written Motion to Recall the Mandate of this Court of October 12, 1990, this Court hereby denies said Motion.

Filed: October 18, 1990

Supreme Court Clerk

IN THE
SUPREME COURT OF ILLINOIS
NO. 70833

DOROTHY REED et al.,	)
	)
Petitioners-Appellees,	)
	)
vs.	)
	)
BARBARA J. NORMAN et al.,	)
	)
Respondents-Appellants.	)

ORDER

This case is before the court on an appeal and cross-appeal from a judgment of the circuit court of Cook County to this court, pursuant to our Rule 302(b) (107 Ill. 2d R. 302(b)). The briefs of the parties were submitted to the court. Because of the time limitation associated with the general election to be held in this State on November 6, 1991, the following order is entered by vote of a majority of the court, with an opinion to be filed at a later date:

The circuit court ruled that the holding of the Cook County officers electoral board that the Metropolitan Water Reclamation District Harold Washington Party candidates be removed from the ballot was correct. That ruling of the circuit court has not been challenged in this appeal. The ruling of the circuit court is therefore final and will not be considered in this order.

The Cook County officers electoral board held, and the circuit court, on review, affirmed the holding, that the petitioners' use of the name "Harold Washington Party" in the petition to form a new political party, pursuant to section 10-2 of the Election Code (Ill.Rev.Stat. 1989, ch. 46, par. 10-2), does not violate the provisions of section 10-5 of the Election Code (Ill.Rev.Stat. 1989, ch. 46, par. 10-5), which prohibits use of the name of an established political party (Ill.Rev.Stat. 1989, ch. 46, par. 10-1 *et seq.*). This court, by majority vote, holds that the petitioners use of the Harold Washington Party name in their petition did violate the provisions of section 10-5. Accordingly, the holding of the circuit court on this question is hereby reversed as erroneous.

The Cook County officers electoral board held, and the circuit court affirmed, that the City of Chicago and the suburban area of Cook County are two separate district from which officers are to be elected and that, under section 10-2 for the formation of a new political party, a separate component of the petition for each district must be circulated, and each component must be signed by 5% of the number of voters who voted at the last election to elect officers serving that district, not to exceed 25,000. The Circuit Court held that the component of the petition for the suburban district did not comply with the requirement of section 10-2 of the Code in this respect. By majority vote of this court, the holding of the circuit court is affirmed: that the component for the suburban district had an insufficient number of signatures for compliance with section 10-2 of the Election Code and that the names of the candidates listed and nominated for the suburban district thus did not qualify for placement on

the ballot.

By majority vote of this court the further holdings of the circuit court are affirmed: that section 10-2 requires that a petition to form a new political party contain the above described number of signatures from all components of the petition, that is, from the components of Chicago and the suburbs; that because of this failure to comply with section 10-2 the names of all candidates listed and nominated according to the appellants' petition fail to qualify for placement on the ballot at the general election on November 6, 1990.

It will not be necessary to discuss other points raised on the appeal. It is noted, however, that, it appearing that R. Eugene Pincham, Sr., has been nominated as a Democratic Party candidate for the office of Cook County commissioner, that qualification and candidacy are of course not affected by this order.

It is further ordered by a majority of this court:

(a) That any injunction or stay order heretofore issued, by either the circuit court of Cook county or the appellate court, relating to the appearance of the Harold Washington Party or its candidates on the ballot for the general election referred to above is vacated.

(b) That the Cook County Clerk and the Chicago board of election commissioners shall proceed forthwith to

prepare and print ballots for the general election in accordance with the provisions of this order.

(c) That the mandate of this court shall issue immediately and without stay.

DATED this 12th day of October, 1990.

Moran, C.J., Ryan and Miller, JJ., dissenting.

IN THE
SUPREME COURT OF ILLINOIS
NO. 70833

DOROTHY REED et al.,	)	
	)	
Petitioners-Appellees,	)	
	)	
vs.	)	ORDER
	)	
BARBARA J. NORMAN et al.,	)	
	)	
Respondents-Appellants.	)	

JUSTICE RYAN dissenting:

I dissent from the order of the majority of this court, which denies the Harold Washington Party candidates access to the ballot. The order results from a needlessly narrow and strict construction of the Illinois Election Code and a construction which I see as wrong. I also join in Justice Miller's dissent.

In holding that the petitioners' use of the name Harold Washington Party violates the provisions of section 10-5 of the Election Code (Ill.Rev.Stat. 1989, ch. 46, par. 10-5), the majority of this court has focused primarily on the language of section 10-5 of the Election Code, which prohibits the use by a new political party of the name of an established party. However, section 10-5 does not just refer to an established party, but refers to an established party "as defined in this article". Section 10-2 of the

Election Code defines established party. These two sections of the Code, read together, support the conclusion that the petition before this court does not violate section 10-5, a position which I will explain in detail in a dissent I will write to the opinion the majority will file at a later date.

As to the provisions of the Election Code concerning the required number of signatures on a new party's petition, here again the majority of this court adopted a narrow and strict construction of the language of section 10-2. In fact, the provisions of section 10-2 are contradictory in this regard and the majority chose to adopt the language that would rule the Harold Washington Party candidates from suburban Cook County off the ballot instead of the language of that section which would have permitted them to remain on the ballot. The last sentence of the fourth paragraph of section 10-2 would limit the number of signatures required from all of Cook County to 25,000, whereas the next to the last sentence of the seventh paragraph of section 10-2 appears to require 25,000 signatures for each component of the county petition: that is, the City of Chicago and the suburban areas.

The last sentence of the seventh paragraph of section 10-2 does not require that the petition contain 25,000 signatures from all components, as the majority of this court holds. Instead, that sentence provides: "the entire petition, including all components," must be signed by the required number of signatures, so it is the entire petition that must have 25,000 signatures. If the statute would have said "including each component" instead of

"including all components" there would have been some justification for the majority's holding that the component for the suburbs and the component from Chicago each have 25,000 signatures. In the next to the last sentence of the seventh paragraph the legislature referred to <u>each</u> component when it meant <u>each</u>. However, in the last sentence of that paragraph in speaking of the entire petition the legislature stated "including <u>all</u> components". A logical construction would be that the entire petition for the formation of a new party in Cook County must have 25,000 signatures.

This construction is strongly supported by the last sentence of the fourth paragraph of section 10-2 to which I earlier referred. That sentence would require that the minimum number of signatures for all of Cook County be 25,000.

As noted below, this court should construe the Election Code liberally in favor of permitting the Harold Washington Party access to the ballot. The majority of this court has instead read the signature requirements narrowly and strictly and has ignored contradicting and limiting language of section 10-2 in order to find that he petition did not have the required number of signatures.

We are dealing with the fundamental rights. In *Illinois State Board of Elections v. Socialist Workers Party* (1979), 40 U.S. 173, 59 L.Ed.2d 230, 99 S.Ct. 983, the Supreme Court stated that restrictions on access to the ballot burden two fundamental rights, the right of individuals to associate for advancement of political beliefs, and the right of qualified voters to cast their votes

effectively. The court, in that case, also stated that even when pursuing a legitimate interest, a State may not choose means which unnecessarily restrict constitutionally protected interests.

In light of the holding in *Socialist Workers Party*, it is incumbent upon this court to avoid a narrow and strict construction of the Election Code, which denies the Harold Washington Party candidates access to the ballot. Instead, this court should apply a construction of those sections involved in this case which recognizes the fundamental rights involved, and which does not unnecessarily impinge upon those rights. Such a construction is logically possible by construing the sections involved together and liberally, and by not narrowly focusing solely on the limiting and restrictive language of specific sections.

In sum, since we are dealing here with fundamental rights, I believe it is incumbent upon this court to adopt the construction of the Election Code which will afford the Harold Washington Party candidates access to the ballot.

As to the majority's statement that the order of this court does not affect the candidacy of R. Eugene Pincham, Sr., as a candidate on the Democratic ticket, I do not dissent, because that issue was never briefed or argued in this court and was not decided in the circuit court, whose judgment we are reviewing. I do, however, strongly object to such an advisory opinion being contained in this order. That question may well be the issue in another lawsuit. Mr. Pincham was counsel for the Harold Washington

Party, petitioners in the proceedings below and in this court. I cannot understand why, after knocking the Harold Washington Party candidates off the ballot, the majority of this court finds it necessary to attempt to separate Mr. Pincham by gratuitously throwing him this morsel.

For the above reasons, I dissent.

CHIEF JUSTICE MORAN and JUSTICE MILLER join in this dissent.

IN THE
SUPREME COURT OF ILLINOIS
NO. 70833

DOROTHY REED et al.,	)	
	)	
Petitioners-Appellees,	)	
	)	
vs.	)	ORDER
	)	
BARBARA J. NORMAN et al.,	)	
	)	
Respondents-Appellants.	)	

JUSTICE MILLER, also dissenting:

By giving a cramped construction to several key provisions of the Election Code, today's decision nullifies without cause the efforts of the thousands of men and women who worked to place candidates of the Harold Washington Party on the November 1990 ballot in Cook County. I cannot concur in the court's disposition of the present matter, and I therefore join Justice Ryan's dissent and, in addition, write separately.

Section 10-5 of the Election Code bars a new political party from using the name "of any established political party as defined in this Article." (Ill.Rev.Stat. 1989, ch. 46, par. 10-5.) Under section 10-2, a political party may become established either on a statewide basis or in discrete districts or political subdivisions of the State. (Ill.Rev.Stat. 1989, ch. 46, par. 10-2.) A party becomes

established on a statewide basis if its candidate for the office of governor receives more than 5% of the entire vote cast for that position. A party becomes established on other than a statewide basis if one of its candidates for office in a political subdivision or district, including a municipality, receives more than 5% of the entire vote cast within that area. In that instance, the party is established "as to such district or political subdivision." Ill.Rev.Stat. 1989, ch. 46, par. 10-2.

It is clear, then, that the statutory scheme contemplates that a political party might become an established entity in one district or political subdivision" of the State but not in others. With respect to parties that are not established entities on a statewide basis, I would thus construe the statutory proscription on the use of an established party's name as extending only "as to such district or political subdivision: in which the party has been established under Article 10. Because the Harold Washington Party is an established entity only in the City of Chicago, Article 10 does not, by its literal terms, prohibit the present candidates from running for county offices under the same party name.

The purpose of the statutory limitation on the names that may be used by a new political party are to prevent a new party from gaining ballot access by unfairly piggybacking on the success of an established party and to avoid voter confusion. It is clear in the present case that the purposes of the legislation would not be undermined by allowing the county candidates to run under the Harold Washington Party name. Before the electoral board, Alderman Timothy Evans, the Harold Washington Party

candidate for mayor in the April 1989 Chicago mayoral election, testified that the present candidates for county office were using the party name with his approval. It is certainly true that Alderman Evans would have no authority to consent to a violation of the plain language of the statute. As I have already explained, however, the county candidates' use of the name of the Harold Washington Party is not literally proscribed by the Election Code. Alderman Evans' testimony should be considered in determining whether the purpose of the statute are implicated in the present case, and his statements demonstrate that the county candidates were not taking unfair advantage of the party's showing in the earlier municipal election.

Indeed, the majority's decision will significantly burden efforts by a new party to expand on other than a statewide basis. It is no answer to suggest, as the objectors do, that a party seeking to slate candidates in a district or political subdivision in which it had not previously run may use the primary and caucus procedures contained in Article 7 of the Election Code. By their terms, those provisions are applicable only to political parties already established on either a statewide basis or in the particular district or political subdivision in which nomination is sought. (See Ill.Rev.Stat. 1989, ch. 46, par. 7-2) Thus, after today's decision, it is not clear how a new party may go about expanding from one district to another.

The majority also construes section 10-2 as requiring a new party to submit 25,000 signatures from both the city and suburban components of Cook County.

Under the majority's interpretation, a new political party fielding candidates in that county must therefore gather a total of 50,000 signatures in support of its slate or face disqualification of the entire ticket. Section 10-2 provides, however, that a party seeking to run on a statewide basis will never be required to submit more than 25,000 signatures. The majority's result in the present case seemingly conflicts with the Supreme Court's decision in *Illinois State Board of Elections v. Socialist Workers Party* (1979), 440 U.S. 173, 59 L.Ed.2d 230, 99 S.Ct. 983, which invalidated, on constitutional grounds an earlier provision in section 10-2 that effectively required a new party to present more signatures to run a candidate in the City of Chicago than statewide. The majority's construction of the statute produces a similar disparity. When statutory language is reasonably susceptible to several interpretations, a construction favoring its constitutionality will be preferred. (See *People v. Orth* (1988), 124 Ill.2d 326, 334; *Cronin v. Lindberg* (1976), 66 Ill.2d 47, 60; see also *Morrison v. Olson* (1988), 487 U.S. 654, 682, 101 L.Ed.2d 569, 600, 108 S.Ct. 2597, _____.) As the record in this case demonstrates, there are several narrower alternatives to the majority's interpretation of the provisions of section 10-2 pertaining to signature requirements. None of those alternatives would compel the harsh result of invalidating the entire ticket for the failure to present a total of 50,000 signatures for the combined components of the Cook County slate.

Finally, the court unnecessarily offers advice to Harold Washington Party candidate R. Eugene Pincham, Sr., that he may continue to run as a Democratic candidate for the position of county commissioner, for

which he previously qualified through primary election. His eligibility to run as a candidate of that party is not at issue here. Pincham is well aware of his rights and obligations under the Election Code. He needs no instructions from the majority with respect to those matters.

The formation of political parties and the freedom to vote for candidates of one's choosing are fundamental rights under both the Federal and State Constitutions. (*Illinois State Board of Elections v. Socialist Workers Party* (1979), 440 U.S. 173, 59 L.Ed.2d 230, 99 S.Ct. 983; *Anderson v. Schneider* (1977), 67 Ill.2d 165.) The various provisions of the Election Code deserve a liberal construction so that those rights may be fulfilled. The court's decision in the present case is not compelled by a fair reading of the relevant statutes and unnecessarily hampers voters of this State in the exercise of their rights.

For the reasons stated, I respectfully dissent.

CHIEF JUSTICE MORAN and JUSTICE RYAN join in this dissent.

STATE OF ILLINOIS	)	
	)	SS.
COUNTY OF COOK	)	

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, COUNTY DIVISION

Barbara J. Norman, Janice H.	)	
Robinson, Donald Pamon,	)	
Heldia Richardson, Tommy	)	
Brewer, Charles W. Alexander,	)	
Dorothy C. Hogan, Will	)	
Lawrence, Kenneth G. Hopkins,	)	
R. Eugene Pincham, Robert E.	)	
Pincham, Jr., Percy V. Coleman,	)	
Vivian D. Stewart-Tyler, James	)	
Deanes, Dino F. McNeal, Mary	)	
King Criss, David T. Persons,	)	
Helen E. Jones, Robert E.	)	
Brooks, Jr., Mello Sam H.	)	
Clora, Judy Marie Hawthorne,	)	
Chester LeSure, Celia Duncan,	)	
Don D. Passmore, Jr. and	)	
Bobbie B. Smith	)	
	)	
Petitioners	)	No. 90 CO 00238
	)	No. 90 CO 00244
	)	
-VS-	)	
	)	
Stanley T. Kusper, Jr.,	)	
Aurelia Pucinski	)	

and Ernesto D. Borges)
Constituting the Cook County)
Officers Electoral Board;)
and Dorothy Reed,)
Valerie A. Sutton, Patton L.)
Feichter, Ervin S. Ricks,)
David Barrera)
)
Respondents)

ORDER

This consolidated cause coming to be heard on petition for judicial review from an order of the Electoral Board filed August 29, 1990. Harold Washington Party filed candidates for County Board President, Assessor, Treasurer, Commissioners of the Board of Appeals, Superintendent of the Educational Service Region, State's Attorney, Clerk, Sheriff, County Commissioner and Commissioners of the Metropolitan Water Reclamation District.

Seven separate findings were made by the Board:

1. The Electoral board was legally constituted.
2. The objections were filed on time.
3. Use of the name Harold Washington Party did not conflict with §10-5 of the Election Code.
4. Candidate R. Eugene Pincham, Sr. can run for County Commissioner under the Harold Washington Party name after being defeated as a democrat for County board President.

5. The Harold Washington Party failed to receive the required number of signatures on their petition for Suburban County Commissioners and Metropolitan Water Reclamation District candidates.
6. Objector did not offer sufficient proof to warrant a binder check.
7. Judicial candidates did not need to be included on the Harold Washington Party's slate to create a complete slate of county candidates pursuant to the election code.

The following Board rulings are in dispute:

1. Use of the name Harold Washington Party did not conflict with §10-5 of the Election Code.
2. Candidate R. Eugene Pincham, Sr. can run for County Commissioner under the Harold Washington Party name after being defeated as a democrat for County Board President.
3. The Harold Washington Party failed to receive the required number of signatures on their petition for Suburban County Commissioners and Metropolitan Water Reclamation District candidates.
4. Judicial candidates did not need to be included on the Harold Washington Party's slate to create a complete slate of candidates pursuant to the election code.

RULINGS

I. As to the use of the name Harold Washington Party this court, on other grounds, affirms the decision of the Board. This court reasons as follows:

A.) The Harold Washington party became an established political party in Chicago pursuant to 10-2 of the Election Code at the time of the April, 1989 Mayoral Election.

B.) While Timothy C. Evans was the only candidate of the Harold Washington Party, his only power, pursuant to §10-2 of the Election Code, was the ability to appoint interim committeemen.

C.) Section 10-2 states as follows:

> A political party which, at the last election in any congressional district, legislative district, county, township, municipality or other political subdivision or district in the State, polled more than 5% of the entire vote cast within such territorial area of political subdivision, as the case may be, has voted as a unit for the election of officers to serve the respective territorial subdivision, is hereby declared to be an

"established political party" within the meaning of this article <u>as to such district or political subdivision.</u> (emphasis added)

D.) For the purpose of determining a party's status as an established political party, within the meaning of §10-2 of the Election Code, this court recognizes that the City of Chicago and the County of Cook are separate political subdivisions.

E.) County Commissioners are County officers. Since the Harold Washington Party was an established political party only in the political subdivision that is the City of Chicago, only the candidates for <u>city officers</u> are prohibited by §10-5 of the Election Code from running as a new political party within the City of Chicago. Section 10-5 of the Election Code states that "Such party shall not bear the same name as, nor include the name of any established political party."

F.) §7-4 (6) of the Election Code defines "County Office" as "an office to be filled by the qualified electors of the entire county." These County Commissioners are not being voted on by citizens of the entire county, some being voted in by city voters and some by suburban voters only. This provisions also states that "County office

also includes the Assessor and Board of Appeals and County Commissioners and President of the County Board of Cook County and County Board Members..." Since County Commissioner is specifically defined as a "county office," the establishment of the Harold Washington Party in the City of Chicago is irrelevant to the election at issue. (Emphasis added)

G.) Under this construction of §10-2 of the Election Code, one may expand an established political party from one political subdivision to another merely by complying with the new political party requirements of §10-2. Construing §10-2 as written limits the application of §10-5, which deals with the concepts of party stealing and voter confusion. It is not the function of this court to legislate. The legislature may, if it sees fit, re-draft these sections to address these concerns.

II. The court finds that the Board properly ruled that the suburbs are a separate component of Cook County under §10-2 of the Election Code. This statute requires that the new party obtain an appropriate number of signatures in each ballot. Each component of the petition for each district from which an officer is to be elected must be signed by qualified voters of the district equalling in number not less than 5% of the voters in the political subdivision or a number equivalent to 1%

of the voters in the State of Illinois, not to exceed 25,000. The Board's ruling as to the exclusion of candidates for County Commissioner from the suburbs was correct.

III. The Board's inclusion on the ballot of candidates for County Commissioner from the city was incorrect.

A. This Court finds that §10-2 of the Election Code states as follows:

> In the case of a petition to form a new political party within a political subdivision in which officers are to be elected from districts and at large, such petition shall consist of separate components for each district from which an officer is to be elected. ...**Each component** of the petition for **each district** from which an officer is to be elected must be signed by qualified voters of the district equalling in number not less than 5% of the number of voters who voted at the next preceding regular election in such district at which an officer was elected to serve the district. The entire petition, **including all components**, must be signed by a total of qualified voters of the entire political subdivision equalling in number not less than

5% of the number of voters who voted at the next preceding regular election in such political subdivision at which an officer was elected to serve the political subdivision at large.

B. The failure to obtain 5% support or 25,000 signatures for the suburban County Commissioner candidates voids the entire slate of Cook County candidates of the Harold Washington Party petition for two reasons.

1. It fails to comply with §10-2 of the Election Code's requirements of 5% or 25,000 signatures **from all components**.

2. Non-compliance with the suburban component is a failure to file a complete County slate.

a. Anderson v. Schneider, 67 Ill.2d 165, 176, 365 N.E.2d. 900, 904, (1977), states that the complete slate requirements of §10-2 of the Election Code confers no authority

for the removal of all the candidates because one is qualified.

b. In the case at bar, the entire slate of suburban Cook County Commissioners were unqualified. **Anderson** is inapposite to these facts.

IV. Cross-appellants suggest that §10-2's component is unconstitutional. An Amicus Curiae brief was filed on behalf of the Independent Voters of Illinois-Independent Precinct Organization. A reviewing of court will decide a constitutional question only where it is essential to the disposition of the case. In re Application of the County Collector of Kane County for Judgement for Delinquent Taxes for the Year 1985, 172 Ill.App.3d 897, 122 Ill.Dec. 769, 527 N.E.2d 141 (2d Dist. 1988); citing Bender v. City of Chicago, 58 Ill.2d 284, 287, 319 N.E. 2d 34 (1974). This case is disposed of on other grounds. The constitutionality of §10-2 of the Election Code need not be addressed.

V. This court finds that the Board's ruling as to the exclusion of Metropolitan Water Reclamation District candidates was correct, but for the wrong reasons.

A. The Board ruled that the Metropolitan

Water Reclamation District was a separate "component" of Cook County under §10-2 of the Election Code.

B. The court finds that, under §10-2 of the Election Code, the Metropolitan Water Reclamation District is a separate political subdivision and not a component of Cook County, as was held by the Board.

C. Political subdivision is defined as "any unit of local government in which elections are or may be held." Ill.Rev. Stat. ch. 46 §1-3 (6).

D. Since the Metropolitan Water Reclamation District and Cook County are separate units of local government, they are distinct political subdivisions.

E. Section 10-2 of the Election Code requires a new political party to obtain signatures of 5% of the voters or a number equivalent to 1% of the voters in the State of Illinois, not to exceed 25,000. The Harold Washington Party failed to obtain the requisite signatures for the Metropolitan Water Reclamation District, making exclusion from the ballot proper.

F. It should be noted that failure to garner the appropriate voter support in the Metropolitan Water Reclamation District

has no effect on the complete slate of Cook County candidates. Section 10-2 requires the filing of a complete slate "for all offices to be filled in the ...political subdivision." The slate in the political subdivision of Cook County is complete without the addition of candidates from the political subdivision of the Metropolitan Water Reclamation District. (emphasis added)

VI. As to the issue of whether a failure to include judicial candidates on the Cook County slate was a failure to file a complete slate, this court overrules the Board as follows:

A. That §10-2 of the Election Code requires that where a petition to form a new political party within a political subdivision is filed, it must contain a component petition for each district contained in that subdivision from which an officer is to be elected.

B. §1-3 (14) of the Election Code defines "district" as including "judicial districts" and "judicial circuits."

C. §10-2 of the Election Code requires a list of candidates for "all offices to be filled in the political subdivision at large." Judges to be elected in the Cook County Judicial Circuit are such officers.

D. That the exclusion of judicial candidates on

the slate was a failure to fulfill the "complete slate requirement" of the Election Code. This failure completely invalidates the petition.

VII. The court affirms the Board's holding that the party switching of R. Eugene Pincham, Sr. did not violate §10-2 of the Election Code. Due to the deficiencies stated above, which invalidates the Harold Washington Party petition, Mr. Pincham may not run as a Harold Washington Party candidate.

VIII. Cross-appellant alleges that there was fraud in objections five and six of the objectors' petition. There was insufficient evidence to established a prima facie case for such fraud.

IT IS THEREFORE ORDERED:

1. That the challenged rulings of the electoral board are hereby reversed in so far as they are inconsistent with this opinion.

2. That the Cook County and Chicago Board of Election Commissioners are hereby enjoined from printing the name of Harold Washington Party of the names of any candidates thereof, either with the designation of the Harold Washington Party or without any party designation on the

general election ballot for the election to be held on November 6, 1990.

3. That the Electoral Board shall forthwith issue an amended Electoral Board decision in accordance with the rulings herein.

4. That the prior order of September 14, 1990 enjoining the Cook County Clerk and Chicago Board of Elections Commissioners from printing ballots for the November 6, 1990 general election and is hereby vacated.

5. That this order is final and appealable.

ENTERED:

September 22, 1990
Date

/s/ Eugene L. Wachowski

Hon. Eugene L. Wachowski

BEFORE THE COUNTY OFFICERS ELECTORAL BOARD FOR THE HEARINGS AND PASSING UPON OF OBJECTIONS TO THE NOMINATION PAPERS OF CANDIDATES FOR NOMINATION TO OFFICES FROM DISTRICTS OR DIVISIONS WHICH ARE COTERMINOUS WITH OR LESS THAN THE COUNTY OF COOK AND STATE OF ILLINOIS

OBJECTIONS OF THE HAROLD WASHINGTON PARTY, A NEW POLITICAL PARTY, AND TO EACH OF THE FOLLOWING CANDIDATES OF THE HAROLD WASHINGTON PARTY:

COUNTY-WIDE

BARBARA J. NORMAN, JANICE H. ROBINSON, DONALD PAMON, HELDIA R. RICHARDSON, TOMMY BREWER, CHARLES W. ALEXANDER, DOROTHY C. HOGAN, WILL LAWRENCE, KENNETH G. HOPKINS;

INSIDE THE CITY OF CHICAGO

R. EUGENE PINCHAM, ROBERT E. PINCHAM, JR., BARBARA J. NORMAN, PERCY V. COLEMAN, VIVIAN D. STEWART-TYLER, JAMES A. DEANES, DINO F. MCNEAL, MARY KING CRISS, DAVID T. PERSONS, HELEN E. JONES;

OUTSIDE THE CITY OF CHICAGO

ROBERT E. BROOKS, JR., MELLO SAM H. CLORA, JUDY MARIE HAWTHORNE, CHESTER LESURE, CELIA DUNCAN, DON C. PASSMORE, JR., BOBBIE J. SMITH

DECISION

The duly constituted COUNTY OFFICERS ELECTORAL BOARD, consisting of the HONORABLE STANLEY T. KUSPER, JR., HONORABLE AURELIA PUCINSKI and HONORABLE ERNESTO D. BORGES, public member, replacing the HONORABLE CECIL A. PARTEE, organized by law in response to a Call issued by the HONORABLE STANLEY T. KUSPER, JR., Chairman of said Electoral Board, for the purpose of hearing and passing upon of objections to the nomination papers of candidates for nomination to County-Wide Offices and to the Office of Cook County Commissioner from Chicago and from outside the City of Chicago having convened on August 14, 1990 in room 569 of the Cook County Building, in the City of Chicago, County of Cook and State of Illinois, and having heard and determined the objections to the petitions in the above entitled matter, finds that:

1. The said Electoral Board has been legally constituted according to the laws of the State of Illinois;

2. Objections to the nomination papers of the candidate herein were duly filed;

3. A Call to the hearing on said objections was duly issued and was caused to be served upon the members of the Electoral Board, the objector and the candidate by mail and

by personal service as provided by statute;

4. A public hearing was held on these objections on August 14, 1990, and subsequent dates;

5. There were present at such hearings the following persons, among others:

   a) Honorable Stanley T. Kusper, Jr., Chairman; Honorable Aurelia Pucinski, Member and Honorable Ernesto D. Borges, Member;

   b) the objectors, by their counsel;

   c) the party and its candidates, by their counsel;

6. All evidence, if any, that was tendered by those appearing at the hearing was heard and considered by the Board;

7. All arguments, if any, that were made at the hearing were considered by the Board;

8. The Board, having heard oral argument and, considering the legal memoranda and all other evidence presented, hereby makes the findings contained in the attached Opinion.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Objections to the nomination

papers of the HAROLD WASHINGTON PARTY, for nomination of its candidates to County-Wide Offices, and for its candidates to COOK COUNTY COMMISSIONER inside the City of Chicago, are hereby DENIED and as to the party and its candidates for Cook County Commissioners outside the City of Chicago is GRANTED, in conformity with the findings attached hereto and made a part hereof.

DATED at Chicago, Illinois this 29th day of August, 1990.

/s/ Stanley T. Kusper, Jr.
STANLEY T. KUSPER, JR., Chairman

/s/ Ernesto D. Borges, Jr.
ERNESTO D. BORGES, Public Member

Concurring in Part and Dissenting in Part:

/s/ Aurelia M. Pucinski
AURELIA M. PUCINSKI, Member

COOK COUNTY OFFICERS ELECTORAL BOARD CONSOLIDATED OPINION

BACKGROUND

These cases concern objections to various petitions filed by candidates of the Harold Washington Party for election at the November, 1990 General Election. The Harold Washington Party ("HWP") filed as a "new" political party under the provisions of Article 10 of the

Election Code.[1] HWP filed candidates for County Board President, Assessor, Treasurer, Commissioners of the Board of Appeals, Superintendent of the Educational Service Region, State's Attorney, Clerk, Sheriff, County Commissioner and Commissioners of the Metropolitan Water Reclamation District.

Dorothy Reed, Valerie Sutton, Patton Feichter, Ervin Ricks and David Barrera filed objections to these candidates pursuant to §10-8, charging that the HWP petitions lacked the requisite number of signatures and that they otherwise failed to meet the constraints of Article 10.

This Board is constituted of the County Clerk, who serves as Chairman; the Clerk of the Circuit Court and the State's Attorney or an Assistant State's Attorney designated by him. Because the incumbent State's Attorney, Cecil Partee, would be running against Janice H. Robinson, a challenged HWP candidate, Partee recused himself from the Board, as required by §10-9. The statutorily authorized substitute members, Treasurer Edward Rosewell and Sheriff James O'Grady, are also candidates for re-election and were likewise disqualified. The Chief Judge of the Circuit Court, the Honorable Harry Comerford, then appointed attorney Ernesto D. Borges, Jr. as a public member of the Electoral Board.

The Board met on August 14, 1990, and thereafter to consider the objections. Since most of the objections

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[1]Unless otherwise specified, all statutory references are to the Illinois Election Code, Ill.Rev.Stat. (1989) ch. 46.

were of a legal, rather than factual, nature, they were determined by the Board's decisions on the candidates' motions to dismiss. The Board made oral rulings on some of these issues as they were presented on a daily basis. Due to the likelihood these cases will be appealed on judicial review, and because some of the issues raised represent new advances in electoral jurisprudence, we have issued this opinion detailing the Board's reasoning for these rulings.

I

DISQUALIFICATION OF THE ELECTORAL BOARD

The HWP first suggests that the Board should be disqualified because its members are "interested" in the litigation.[2] In support of this motion, HWP submitted an unverified document labeled "Respondent Harold Washington Party's Objection to the Composition of the Electorial [sic] Board for [sic] Cook County." The objection names various democratic officials who, it is alleged, oppose the HWP. The objection feebly attempts to link two members of the Board, who are elected democratic officials, with the anti-HWP comments of these officials. The objections conclude with a one-sentence declaration that "It is axiomatic that fundamental Due Process and Equal Protection are denied petitioners[3]

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[2]HWP asked the Board to transfer this cause to the State Board of Elections. There is no statutory authority to transfer an action that, pursuant to the Election Code, must be heard before this Board.

[3][Footnote by the Board]. The Board presumes that the word "Petitioners" is meant to refer to the HWP candidates, who are actually

because the County Officers Electorial [sic] Board and it's [sic] members are interested parties in the instant litigation." The HWP does not direct the Board's attention to any relevant case law or legal authority to support this claim.[4]

The Board is acutely cognizant of the serious nature of the objections and the great public interest in them. The Board is, as always, aware of its sworn duty to uphold the law and constitutions of the United States and State of Illinois.

However, the statutes clearly designate certain officials as members of the Electoral Board. Section 10-9 permits a board member to step down in circumstances where "any member of the appropriate board is a candidate for the office with relation to which the objector's petition is filed". That statute also provides for substitution of the dismissed member.

This issue was raised in *Ryan v. Landek*, 111 Ill.Dec. 97, 512 N.E.2d 1 (1987). In *Ryan*, the Board contained persons who were running on the same new party slate as the candidate. The Appellate Court held, although a majority of the Board were party members, the composition of the Board did not deny the objector due process, since judicial review of the Board's decision was

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respondents in this litigation.

[4]Moreover, in these circumstances, the right to an impartial judge implicates only the right to due process of the law, rather than equal protection.

readily available, and since the legislature failed to provide for recusal of members for any reason other than that specified in the statute.

The *Ryan* board contained persons who were actually running on the same new party slate as some of the litigants. This Board contains no such persons, and the link urged by HWP is considerably more tenuous than the link of the *Ryan* Board to the litigants, which was found not to violate the candidates' due process rights. Thus, the HWP's motion to disqualify the Board is denied.

II

TIMELINESS OF FILING OF THE OBJECTIONS

The HWP next moved to strike and dismiss the objections on the basis that they were not timely filed. It is well settled that absent a timely-filed objection, the nomination papers are presumed valid and the candidates' names shall appear on the ballot. §10-8.

Section 10-8 specifies that the objections must be made in writing within five business days after the last day for filing the nominating papers. The HWP filed their petitions on the last possible day, Monday, August 6, 1990. HWP contends that five business days after August 6 was Saturday, August 11, 1990. The objections were not filed until Monday, August 13.

In support of its position, HWP cites *Mierswa v. Kusper*, 121 Ill.App.3d 430 (1st Dist. 1984). Mierswa filed her objections on the Monday following the Clerk's

administratively set Saturday deadline. The Clerk refused to convene the Electoral Board to hear her objections, contending that the objections were not timely filed since his office was open on Saturday. Mierswa prayed for a writ of mandamus commanding the Clerk to convene the Board to hear her objections. The Appellate Court found that the objections were not timely filed, since the Clerk was required by law to keep his office open to noon on Saturday--precisely the position urged by the HWP here.

However, *Mierswa's* reach has been limited by a legislative response to this commonly-litigated scheduling quandary. Just last year, the General Assembly passed Public Act 86-873, which defines "business day" as "any day in which the office of an election authority, local election official or the State Board of Elections is open to the public for a minimum of 7 hours." That Act also clarified the computation of the time for election activities by specifying that if the last day for doing an act required under the Election Code falls on a Saturday, the deadline moves to the following Monday.[5] §1-5. Since the Clerk was not open for 7 hours on August 11, 1990, but was open for 8 hours on August 13, the last day for filing objections to the HWP petitions was August 13.[6] HWP's motion to dismiss for failure to file the objections on time is denied.

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[5]Assuming, of course, that the Monday is not a holiday.

[6]We also note that the election calendars published by the Chicago Board of Election Commissioners, the Cook County Clerk and the State Board of Elections all designate August 13 as the last day for filing objections.

III

USE OF THE NAME "HAROLD WASHINGTON PARTY"

The objectors claim that the candidates cannot use the name "Harold Washington Party" because it is an established political party in the City of Chicago. This objection is made against all petitions filed by the HWP for county, city, suburban and Water Reclamation District offices.

The Board takes administrative notice of the fact that Timothy C. Evans formed the Harold Washington Party for his candidacy for Mayor of Chicago in 1989, and that Evans received more than 5% of the vote in his unsuccessful effort. Thus, pursuant to §10-2, the Harold Washington Party became, and is presently, an established political party in the City of Chicago.[7]

Section 10-5 prohibits new political party petitions for nomination from bearing the same name as, or including the name of, any established political party as defined in Article 10. The obvious purpose behind this prohibition is to prevent persons who are not affiliated with a party from "latching on" to the popular party name, thereby promoting voter confusion and denigrating party

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[7]The Board notes that the municipality, the City of Chicago, is territorially different from the Cook County Board District consisting of that part of Cook County lying within Chicago (Ill.Const. (1970) Art. VII, § 3(c).) The City of Chicago includes territory within DuPage County. However, for the Board's purposes, the distinction is not relevant.

cohesiveness.

When the HWP became established in the City of Chicago, Evans, as the candidate of the party, was eligible to select party committeemen as were "necessary for the creation of a provisional party organization and provisional managing committee of the party." §10-2. These committeemen serve until the next primary election at which established political party committeemen are elected.[8] Evans testified that he has not as yet, appointed any such committeemen, but that he, as candidate, authorized the HWP candidates to use the party name.[9]

The Board believes that the purposes of the statute, to stop "party stealing", and confusion are important ones. The Board was concerned that confusion would exist if the Chicago HWP was indeed, not the same as the "new political party" in the County, named the HWP. A question that needed to be resolved was whether the new HWP was one in the same as the Chicago HWP involving the same people. Further, the Board finds that the

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[8]In fact, several persons attempted to run as HWP ward committeeman candidates in the 1990 primary. Objections were filed to their candidacies by no less than Mr. Evans, who contended that ward committeemen could only be elected in the next "presidential" election year, or 1992. The Appellate Court agreed, and the candidates were stricken from the 1990 ballot.

[9]The Board specifically finds that Evans, pursuant to §10-2 has no authority to act as *Chairman* of the HWP since there is no statutory authority for such designation until committeemen are appointed or elected and then elect a Chairman to lead the newly established political party.

prohibition of §10-5 does extend to the county HWP candidates now before this Board, since the HWP is an established party as defined by Article 10.[10] A strict reading of the statute would have the constitutionally suspect effect of stifling the creation of a new major political party which starts in a small jurisdiction and then attempts to grow across the state. Such a narrow reading would unduly burden the candidates' rights to freedom of association. Balancing the candidates' rights against those of the state in ensuring the integrity of the electoral process required the Board to inquire as to the legitimacy of the connection between the county HWP and the established Chicago HWP.

Evans testified that the County HWP was granted permission by him (as the only candidate of the Chicago HWP party) to use the party name as an "official" branch of the Chicago HWP. Although Evans is not the statutory party chairman he is the only person empowered by the Election Code to act in any official capacity for the HWP.

We find that Evans' testimony was credible and uncontroverted, and although Evans is not the statutory chairman of the HWP, he is the only person at this point in time, allowed to act as specified above for the party. Evans testified that he gave permission for use of the name prior to the county HWP petitions being circulated and is the only person to testify in these regards.

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[10] However, Chairman Kusper believes the 10-5 prohibition does not extend to the newly formed HWP since it is forming "Countywide" and not within the same political subdivision (City of Chicago) as the established HWP.

The objectors' reliance on *Ballentine v. Bardwell*, 132 Ill.App.3d 1033, and *Doty v. REP Party*, 97 Ill.App.3d 316 is misplaced. In neither case was the new political party which adopted the name of an established party merely an expansion of the existing party into a different jurisdiction. In each case, the new party was attempting to form in the same jurisdiction as the existing party. Here, the evidence demonstrates that it is the same HWP which is reaching out to expand into new political territory. Since the purpose of the statute is to protect the existing party and its supporters against non-supporters from borrowing its goodwill, the statute has no bearing here.

We have considered the affidavits of Nancy Jefferson and David Reid and find them to be of no evidentiary value, since neither person was a candidate or official of the HWP as designated by statute.[11]

Thus, the motion to dismiss the objection that the name "Harold Washington Party" could not be used by the candidates, is granted.

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[11]State statutory restrictions on political party organization are suspect as they unduly burden the party members' freedom of association rights. *San Francisco County Democratic Committee v. Eu*, 826 F.2d 814 (9th Cir. 1987), aff'd, 109 S.Ct. 1013 (1989). However, Illinois grants these party officials certain public authority, thus legitimizing the minimal structural framework established by Articles 7 and 10 of the Election Code. *Kluk v. Lang*, 125 Ill.2d 306 (1989).

IV

THE DUAL CANDIDACY OF R. EUGENE PINCHAM, SR.

R. Eugene Pincham, Sr. is a former Circuit and Appellate Court judge who resigned from the court to run for President of the Cook County Board in the March, 1990 democratic primary. Pincham ran also for Cook County Commissioner to be elected from inside Chicago.[12] Pincham lost for President to Richard Phelan, but did win one of the ten nominations for a Chicago board seat.

Pincham is now running for Cook County Commissioner as a candidate of the HWP.[13] Section 10-2 of the Code states:

> A candidate for whom a nomination paper has been filed as a partisan candidate at a primary election, and who is defeated for his or her nomination at the primary election, is ineligible for nomination as a

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[12]A dual candidacy for President and Commissioner is expressly permitted by Ill.Const. (1970) Art. VII, § 4(b).

[13]We decline to speculate on the legal effect of Pincham's simultaneous candidacy for the same office on two different party tickets, a practice seldom seen in American politics (except in the State of New York) and unprecedented in Illinois. We note that the objectors merely charged that the "sore loser" clause of §10-2 prevented Pincham from running as a new party candidate.

candidate of a new political party for election in that general election.

The objectors charge that since Pincham lost his bid for President, he is barred from running for Commissioner. At first glance, the statute indeed appears to prohibit party-switching between the primary and general elections. However, the statute is commonly referred to as a "sore loser" statute,[14] and was enacted in response to the activities of John Nimrod, an incumbent republican state senator who lost the 1982 primary and ran undaunted to keep his senatorial seat as the candidate of the "Taxpayers for Nimrod" party. The state may constitutionally prevent a candidate from having more than one bite at the same apple. It may also constrain one's political activities to one political party for one season. Whether Illinois law prevents Pincham, under these unusual circumstances, from running for Commissioner as a HWP candidate, is the question faced by this Board.

Pincham won his primary for county commissioner and now wishes to switch parties. The statutes contain no

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[14]For an exhaustive constitutional analysis of "sore loser" statutes and "party switching" prohibitions, see *Citizens for Moore v. Chicago Board of Election Commissioners*, 599 F.Supp. 662, *question certified* 781 F.2d 581, *certified question declined to be answered* 94 Ill.Dec. 69, *opinion after certified question declined* 794 F.2d 1254, *on remand*, 665 F.Supp. 1334, *aff'd*, 845 F.2d 144 (1989).

prohibition against such conduct.[15] In our view, Pincham's loss for President should not bar him from seeking a commissionership under the HWP label. The language of the statue specifically refers to one who is defeated for "his or her nomination" at the primary, lending credence to HWP's argument that the statute is meant only to "lock-out" the sore loser from running for the precise office he lost at the primary. The legislative history of the statute supports this conclusion as well. Finally, we note that when an election law is unclear, the benefit of the doubt must be given to the candidate. *Merz v. Volberding,* 94 Ill.App.2d 111 (1981). If the legislature had meant to prohibit party switching in the unusual manner used here, it could have done so with language sufficiently clear to put the candidate on notice of the activities which are prohibited. Pincham won his nomination for county commissioner. The statutory language regarding a candidate who is defeated thus only would apply to his loss for President. We find that his past candidacy for President is not relevant to the sore loser statute and that it is thus not a bar to his candidacy.

Thus, HWP's motion to dismiss the objection to Pincham's candidacy on this ground is granted.

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[15]In fact, this is precisely what Adlai Stevenson did in 1986, when he withdrew as the democratic nominee for Governor and ran under the Illinois Solidarity party label.

V

THE MINIMUM SIGNATURE REQUIREMENTS

Since HWP desired to run candidates not only for county-wide offices but for county commissioners from the two county board districts as well, and for Commissioners of the Metropolitan Water Reclamation District, it utilized the "component" form of nominating petition. Section 10-2 requires that such petition consist of separate components for each district from which an officer is to be elected. Each component must be circulated only within a district of the political subdivision involved and signed by electors who reside therein. Further, each sheet of the petition must contain a complete list of the candidates for the at large positions and those from the particular district. Each district component must contain the signatures of not less than 5% of the voters who voted at the next preceding regular election in the jurisdiction[16]. Further, the entire petition for County-Wide Candidate must be signed by not less than 5% of the voters who voted at the next preceding regular election in the entire jurisdiction.

In a large county such as Cook, this 5% signature requirement works out to be considerably larger than that required of statewide candidates.[17] Such an illogical

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[16]In this case, that is the November, 1988 election for county offices.

[17]That requirement is 1% of the statewide voters, or 25,000, whichever is less. For this election, the 25,000 figure is less and is thus

scheme was struck down in *Socialist Workers Party v. Board of Elections,* 440 U.S. 173 (1989). In response to that decision, the legislature amended §10-2 to provide that if the local requirement exceeds the state requirement, the latter will govern, and local candidates need only collect what is required of the state candidates. Here, that means that the HWP candidates needed 25,000 signatures on each component and a total of 25,000 for their county candidates.

HWP filed approximately 44,000 signatures on the county/city petitions and only approximately 7,800 on the county/suburban component. The candidates for Commissioner of the Metropolitan Water Reclamation District had approximately 8,000 signatures on their component. While the 44,000 signatures on the county/city component is sufficient alone to support both the city candidates and the county candidates, the objectors charge that the failure to include enough suburban signatures on the suburban component is fatal not only to the suburban candidates but to the rest of the ticket as well.

HWP responds by requesting that the Board count the excess city signatures toward the suburban total. The Board cannot do this, since the city signers did not petition to nominate the suburban candidates. Only persons residing in the suburbs may nominate those candidates. HWP also urges the Board to find the suburban petitions valid because the 7,800 signatures

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applicable.

demonstrate the "modicum of support" required by case law. The Board finds that the 25,000 signature requirement for suburban candidates is appropriate, since there are over 1,000,000 voters in suburban Cook County, and since the HWP candidates were not tested in a primary election.[18] The fact that 44,000 signatures were collected in Chicago, which only has slightly more voters than suburban Cook, supports the Board's position that the 25,000 suburban requirement would be attainable if the HWP had a modicum of support in that jurisdiction, a fact which the HWP has not shown.[19]

We further find that the deletion of the suburban component and/or the Metropolitan Water Reclamation District component is not fatal to the remainder of the ticket. The statute is silent on the implementation of the objector's suggested draconian penalty against a party which fell short in it's attempt to field suburban-only candidates and Metropolitan Water Reclamation District candidates, but which demonstrated enough support to qualify on the county and city ballots nonetheless. Such an action would disqualify HWP from the city and county ballots for which it otherwise fulfilled all statutory requirements. The objectors have not directed the

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[18]The signature requirements for new political parties are significantly higher than for established parties, because new parties automatically gain a place on the general election ballot for which the established candidate had to fight in a primary.

[19]Further, the Electoral Board has no statutory authority to alter or vary from the minimum signature requirement as set forth in the Election Code. The question of what is a minimum showing of support (if 25,000 is too much) reposes in a court of competent jurisdiction.

Board's attention to any state interest that would be furthered by such a penalty, thus adding credence to the Board's concern that disqualification of HWP merely for failure to meet the suburban and/or Metropolitan Water Reclamation District requirement would be constitutionally infirm.

The motion of the objector to find the nomination papers of Robert E. Brooks, Jr., Mello Sam H. Clora, Judy Marie Hawthorne, Chester LeSure, Celia Duncan, Don C. Passmore, Jr. and Bobbie J. Smith as candidates for the Cook County Board of Commissioners to be elected from outside the City of Chicago insufficient is sustained. The Board grants the motion of the HWP to strike and dismiss the objection that the remainder of the slate must fall along with the suburban candidates.[20]

Further, as noted above, the HWP candidates for the Metropolitan Water Reclamation District failed to file the 25,000 required signatures. The MWRD petitions contain only about 8,000 signatures on their face. Assuming that the MWRD is includable in the "component" petitions described above, the same analysis applies as did for the insufficient suburban signatures. Since the petitions demonstrate on their face the

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[20]In *Anderson v. Schneider*, 167 Ill.2d 165 (1977), the Supreme Court allowed the entire slate of township candidates and the party name to remain on the ballot after one of the members of the slate was removed by an Electoral Board. Justice Dooley, writing for the majority, found that the sanction of removal of the party name and/or candidates was not necessary to protect the integrity of the electoral process.

candidates' failure to meet the statutory requirement, the objector's motion to find the nomination papers of Jeffrey V. Coleman, Belgee L. Faulkner and Darnell Fourte insufficient is sustained.[21]

VI

ALLEGATIONS AS TO SPECIFIC SIGNATURES (THE "BINDER CHECK")

Having determined that the MWRD and suburban petitions fail to contain a sufficient number of valid signatures, we turn to the remaining city/county petitions.

The objectors filed objections to all 44,000 city/county HWP signatures on the basis that the signatures were not signed in the voters' own proper persons and that the signers were not duly registered voters. The objectors filed 6,000 appendix-recapitulation sheets corresponding to the sheets of the HWP petitions, on which an "X" was marked in each box corresponding to those allegations. In fact, the Board finds from the evidence presented that the Appendix-Recapitulation sheets were photocopies from a "master sheet."

The objectors' contention that **every one** of the signatures filed by the HWP was invalid strains credulity.

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[21]The attorney for the objector withdrew the allegations which relate to the insufficiency of individual signatures.

Even in the most blatant cases of petition fraud[22], some signatures will be valid. The candidates themselves can be presumed to have signed their own petitions.

The statute governing this Board provides that the objector's petition shall "state fully" the nature of the objection. The Electoral Board then must take up the question as to whether the petitions are in proper form. The Board has the power to subpoena witnesses or evidence, and the Chairman must issue subpoenas upon request of any party for the production of relevant documents or persons. The statute explains in detail how the subpoena is enforced in cases of non-compliance.

The Board also must adopt rules of procedure governing the introduction of evidence. This Board's long-established rules provide that a "binder check" may be conducted to determine the validity of allegations such as forged signatures or non-registered signers. The binder check takes place at the office of the election official having custody of the relevant governmental records, and each side may monitor the election clerk's review of the materials and report to the board as to the validity of the objections. The parties may then present additional evidence to the Board to refute the clerk's suggested findings.

The binder check procedure is a convenient way of disposing of numerous individual objections while

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[22]This Board is well-versed in identification of such schemes. *See, e.g., Canter v. Cook County Officers Electoral Board,* 170 Ill.App.3d 364 (1988).

permitting the Board to hear other matters in a limited time frame. It exists only because of the cooperation of the Cook County Clerk and the Chicago Board of Election Commissioners, neither of which is obliged to devote its staffs to such activities at the request of this Board. Both agencies have traditionally cooperated in binder checks because the procedure is a more efficient way to dispose of the objections than by subpoenaing the documents individually for inspection by the Board.

However, this Board has hesitated to make the binder check procedure into a "fishing expedition" for objectors who have failed to do their homework.[23] The statutory scheme provides that the candidates' nomination papers are deemed valid unless proved otherwise. The Board has declined to use its discretion to order a binder check when the Board believes that the objections may have not been compiled with the requisite degree of care or precision.[24] The Board understands that even the most carefully-researched objections will often prove untrue. However, the Board must hold the objector to some standard or burden of proof so that the candidates are not improperly burdened with having to defend against these "fishing expeditions".

The HWP moved to dismiss the signature

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[23]Member Pucinski, although concurring in this part of the decision, additionally feels a stricter rule should be considered in the future requiring a higher standard of proof necessary to allow a binder check.

[24]*See, e.g., Objections of Jessie B. Hoskins to the Nominating Papers of Cardiss Collins*, 85-COEB-RC-3.

allegations on the basis that they were fraudulent. The Board noted the extensive nature of the objections and the apparent similarity to all the objections, along with the fact that every single name was objected to for the same reasons. Consequently, the Board ordered that an evidentiary hearing be held to demonstrate how the objections were researched.

The objectors' petition states that a 15% sampling was done of the HWP petitions, resulting in 53% of those signatures being invalid. In fact, there are no provisions for sampling certain signatures and then expanding a "likely" result from the sampling. The evidence presented by the objectors was insufficient for the Board to find a reasonable likelihood that a binder check or other manner of extensive evidentiary hearing would bring HWP below the 25,000 requirement.

The objectors' only witness on this point was Mrs. Bonnie McGuire, an aldermanic assistant. Mrs. McGuire was a credible witness. She testified that she had extensive experience in petition challenges, and that she reviewed a small sampling of the HWP petitions against February, 1990 poll sheets.[25] She also testified that no signatures were checked against the permanent binder cards to determine if the signature was not, in fact, the signature of whom it purported to be. She prepared these

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[25]While these poll sheets do not represent the current registrations of voters, since voters could have moved, died or registered since February, 1990, they are of some relevance to the Board's consideration whether a good faith effort was made to ascertain the validity of the signatures objected to on the basis that the voter was not registered.

objections and tendered them to a Mr. Michael Carey and Mr. Ray Simon. Mr. Carey instructed her to insert additional objections so that every signature was objected to under the designation "Not Signed In Own Proper Person". Mrs. McGuire rightfully questioned this practice, since her limited, though thorough review had only resulted in the smaller number of objections she listed. Mrs. McGuire testified that Mr. Carey insisted that the additional signatures should be objected to so as to "preserve the objection for the record".

Mrs. McGuire also testified that she met the objectors only briefly at Raymond Simon's office. She explained her research to one of the objectors. Some of the objectors were not even present. Obviously, there was no way for these objectors to have obtained the information relevant to their objections other than through Mrs. McGuire. However, these objectors swore under oath that the objections were true. This lack of knowledge of the nature and accuracy of the objections gives the Board even more reason not to order a binder check.

Taking the only evidence presented by the Objector in its best light, produces only 2,810 specific objections.[26] Thus, the Objector attempts to expand from the 2,810 specific signature objections to a blanket objection

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[26]There were approximately 2,500 specific objections in Objector's Exhibit A (Ex. 5 at the hearing); 120 objections relating to circulators; 190 objections to specific signatures from the Objector's Petition in chief.

including all 60,000 signatures.[27]

The Board sustains the objection in ¶5(s) of the objectors' petition to sheet 4063 since it is a non-conforming sheet, it being a page of a MWRD petition inserted in the county/city component and is invalid; the objection in ¶5(m) that a certain sheet did not bear the signature of a notary public and the objection in ¶5(r) as to sheet 3373 being a suburban/county sheet inserted in the city component, are sustained.

The Board overrules the objection in ¶5(n) that the absence of a notary seal invalidates certain sheets. The Board finds that the sheet appears to have been duly sworn to before a notary public, and that the insertion of a seal is not as crucial to the integrity of the electoral process as the actual oath. *Bowe v. Board of Elections,* 79 Ill.2d 469 (1980). Further, the Board overrules the objection in ¶5(o) since none of the petition sheets were challenged in the appendix recapitulation under the heading "Circulator Did Not Appear Before Notary".

The objectors claim that the sheets done by several "super circulators" contain a pattern of fraud that invalidates the sheets in their entirety.[28] No witnesses were presented, except for Mrs. Bonnie McGuire, who testified that in her experience it would seem to be "impossible" for a circulator to circulate as many sheets as

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[27]This includes suburban and MWRD signatures.

[28]*See, e.g., Fortas v. Dixon,* 122 Ill.App.3d 699 (1984); *Huskey v. Municipal Officers Electoral Board,* 156 Ill.App.3d 201 (1987).

stated in paragraph 5(q). No further evidence was presented by the objector who rested his case after the Chairman of the Board repeatedly offered the opportunity to proceed and present evidence through witnesses or documents or otherwise. The objector presented no evidence which would substantiate the allegations or shift the burden to answer to the HWP. In fact, the HWP had all of the questioned circulators, except one, present at the hearing ready to testify if the Board had found the objector had established a prima facia case, thus shifting the burden to the HWP to present a defense.

The Board further finds that even if the "incredible" circulator sheets were invalidated, the candidates would still have enough signatures to remain on the ballot. The Board also finds that the objectors failed in their burden to show a reasonable likelihood that a binder check would result in the invalidity of the petitions.

The Board also notes that the objectors have not requested that any records be subpoenaed from either the County Clerk or Chicago Board of Election Commissioners to support the validity of their objections. Thus, the objectors' request for a binder check is denied.[29]

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[29]This ruling moots the candidates' objection to the Board's binder check rules which provided that objections would be sustained as to signatures for which binder cards could not be found.

VII

THE NECESSITY TO INCLUDE JUDICIAL CANDIDATES ON THE SLATE[30]

Section 10-2 of the Election Code provides that the new party petition must contain a complete list of the names of candidates of the party for "all offices to be filled in the political subdivision". This has been known in election law circles as the "complete slate requirement".

Having survived the objectors' challenges thus far, the HWP city/county candidates now meet the complete slate requirement, the hurdle most troubling to the Board.

The objectors charge that the HWP did not file a complete slate for offices within the political subdivision of Cook County because it did not file candidates for any judicial office to be elected in Cook County.[31] However, there is nothing in the record as to whether a slate of

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[30]Member Pucinski does not join in this section of the opinion. For the reasons stated in her dissent, she would sustain the objection that the HWP did not file a complete slate for failure to include judicial candidates and find the nomination papers of the county and city candidates invalid.

[31]The objectors correctly point out that there are judgeships to be elected county wide, citywide within Chicago and suburb-wide, each of which matches a component of the petition. However, the suburban issue has been mooted by our decision above, and the analysis of the city judicial slate vis-a-vis city commissioner candidates is identical to our analysis herein of the county judicial slate issue. Thus, we adopt the county analysis as it relates to city candidates accordingly.

judicial candidates were, or were not, filed with the State Board of Elections. Additionally, since there are no new judgeships on the November, 1990 ballot[32], all judgeships cited by objectors are to fill judicial vacancies.

The judgeships at issue are unquestionably "offices". The question is whether they are to be filled in the same "political subdivision". The Election Code defines a "political subdivision" as "any unit of local government, or school district in which elections are or may be held." §1-3(6). The judgeships are elected not from the County of Cook as a unit of local government, but rather from the Cook County Judicial District[33], which is coincidentally coterminous with Cook County.

The Board finds that the legislative intent behind the complete slate requirement is to require a complete slate for all similar offices which run as a group on a recurring basis. In this fashion, the advantages of a new party, rather than the detriments of independent candidacy (such as lower signature requirements) are conferred upon only those who demonstrate cohesiveness and support equivalent to that already demonstrated by the existing

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[32]The one additional judgeship for which nominations were made at the primary was invalidated by the decision of the Illinois Supreme Court in *CBA v. State Board of Elections*, No. 69823, (July 2, 1990, opinion modified on denial of rehearing, August 22, 1990), and upheld on petition for review as to the issue of the new judgeship in its revised opinion issued August 22, 1990.

[33]So created by Ill.Const. (1970) Art. VI, § 2.

political parties.[34]

Moreover, judicial offices are state offices rather than county offices. Ill.Const. (1970) Art. VI. Section 10-2 of the Election Code distinguishes between counties and judicial districts in this context. That statute states that any group of persons desiring to form a new political party throughout any judicial district shall file with the State Board of Elections and that any such group desiring to form a new political party within any county shall file such petition with the County Clerk.

It is logistically impossible for the HWP to comply with the complete slate requirement as it is interpreted by objectors. Candidates for judge must file petitions with the State Board of Elections in Springfield. The HWP county candidates filed with the County Clerk in Chicago.

Thus, the motion to strike and dismiss the objection that the HWP failed to field a complete slate under §10-2 is granted.

CONCLUSION

Since the objectors have failed to demonstrate cause to find the nomination papers of the HWP candidates for county office or city commissionerships invalid, the objections as to those candidates are overruled and those candidates' names as well as the party designation, shall be placed on the November, 1990

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[34]*See, e.g., Anderson v. Schneider,* 67 Ill.2d 165 (1977) (dissenting opinion).

general election ballot.

Since the objectors have demonstrated cause to find the nomination papers of the HWP candidates for suburban commissionerships and Metropolitan Water Reclamation District offices invalid, the objections are sustained, and those candidates' names and offices shall not be placed on the November, 1990 general election ballot.

Dated this 29th day of August, 1990 at Chicago, Illinois:

COOK COUNTY OFFICERS ELECTORAL BOARD

/s/ Stanley T. Kusper, Jr.
Honorable Stanley T. Kusper, Jr., Chairman

/s/ Ernesto D. Borges, Jr.
Ernesto D. Borges, Jr., Member

Concurring in Part and Dissenting in Part:

/s/ Aurelia M. Pucinski, Member
Honorable Aurelia M. Pucinski, Member[35]

[35] I dissent as to Parts III and VII of the opinion and accordingly also to the Conclusion.

Member Pucinski, dissenting as to Parts III and VII of the Board's opinion and as to the Conclusion:

Dissent as to Part III
(Use of The Name "Harold Washington Party")

I concur with the Board's entire opinion, except as to Parts III and VII, and accordingly dissent from the conclusion. I respectfully dissent from that portion of the Board's decision granting the candidates' motion to dismiss the allegations regarding the use of the name "Harold Washington Party".

The Harold Washington Party became an established party in the City of Chicago in April, 1989, when Timothy C. Evans received more than 5% of the vote for Mayor in that election. Section 10-5 of the Election Code plainly states that the name of a new political party shall not bear the same name as, nor include the name of any established political party as defined in Article 10. As the majority indicated, the plain purpose of this statute is to prevent voters from being misled into believing that the new political party is officially and legally linked to the previously-established "new" political party.

The Election Code contains a complicated scheme governing the formation and continuation of political parties. This plan protects citizens from mistakenly believing that certain candidates espouse the views of parties to which they are not affiliated, and further

promotes political continuity and party cohesiveness.

In my view, the testimony of Timothy C. Evans is of no value in determining the propriety of the use of the name "Harold Washington Party". While Mr. Evans was the only candidate of the HWP, the only power he earned by that distinction was the ability to appoint interim party officers. §10-2. Those officers, in turn, not Mr. Evans, have the powers conferred by law upon the established party committeeman. These powers include the power to manage and control the affairs of the new party and such customary powers as conferring the party's endorsement on qualified candidates. Mr. Evans failed to appoint such provisional committeemen so that such power could be lawfully exercised. Having failed in this first step to formalize an established political party structure, the HWP and Evans attempt to argue some type of constitutional deprivation if the HWP is not put on the ballot after the "blessing" by the person who was the only candidate of the party but has no official or statutory designation. The established Chicago HWP must take the necessary statutory steps to organize before any one person can proclaim themselves the "chairman" or party leader.

The language of the statute is clear. The name of the new party **"shall"** not include the name of an established party. The statute classifies this as a mandatory **"prohibition"**, not merely as a directory request. In fact, the word "shall" in this very section has been held to be mandatory by the Appellate Court. *Serwinski v. Board of Election Commissioners*, 156 Ill.App.3d 257 (1987). Thus, I would find that the candidates may not use the name "Harold Washington Party". The courts

have taught us that this statutory prohibition may be enforced simply by striking the candidates' party label and permitting them to run with no label. *Ballentine v. Bardwell,* 132 Ill.App.3d 1033 (1985). I find this to be the appropriate remedy here, and would deny the motion to dismiss this objection and find the nomination papers to be partially invalid by striking the party name.

Dissent as to Part VII
(The Necessity to Include Judicial Candidates On The Slate)

I would sustain the objection to the HWP county and city candidates that failure to include judicial candidates violated the complete slate requirement. Thus, I would find these nomination papers invalid as well.

Section 10-2 of the Election Code requires that where a petition to form a new political party within a political subdivision is filed, it must contain a component petition for each **district** contained in that subdivision from which an officer is to be elected. Cook County is both a political subdivision and a unit of local government. Ill.Const. (1970) Art. VII, §1; Election Code § 1-3(6).

Section 1-3(14) of the Election Code defines "district" as including "judicial districts" and "judicial circuits". The HWP petitions fail to contain certain candidates to be elected at-large by the voters of all Cook County and by no other voters--the judicial candidates. Similarly, the Chicago component fails to list Chicago-only judicial candidates, although precisely the same voters will select those candidates.

Article VI of the Illinois Constitution provides that Supreme, Appellate and certain Circuit Court judges shall be elected from the entire County of Cook.

The Supreme Court's most recent review of the complete slate requirement, *Anderson v. Schneider,* 67 Ill.2d 165 (1977), lends support to this interpretation. Although the court permitted the candidates to remain on the ballot even though one member of the slate was disqualified, both the majority and dissent found that the statute did require that at least a "complete list of candidates" be filed.

HWP argues that since judges serve in a state office, their presence on a complete county slate may be disregarded. This argument is misplaced. The statute plainly calls for a list of candidates for "all offices to be filled in the political subdivision at large". Clearly, judges to be elected in the Cook County Judicial Circuit are such officers. The HWP conveniently fails to focus on pertinent language of the statute which states that persons seeking to form a new political party in a judicial district or in any other district or in any other political subdivision (other than a municipality) **not entirely within a single county,** must file with the State Board. [Emphasis added]. Thus, the HWP properly filed with the County Clerk. It would not have been a burden to add the names of the appropriate judicial candidates from the appropriate voting district (county wide, city only, suburban only) to the list of candidates on the HWP petitions.

For these reasons, I would sustain the objection and find the HWP nomination papers invalid in their

entirety, as to the party. However, the individuals have filed sufficient signatures to remain on the ballot as individuals.